

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TRAVELERS COMPANIES, INC., as Subrogee of Ocean Trading Ltd.,)	
)	
)	
Plaintiff,)	Case No.
)	FILED: MAY 21, 2008
v.)	08CV2952 PH
)	JUDGE MORAN
EVERGREEN SHIPPING AGENCY (AMERICA) CORPORATION and ACE WORLD WIDE AIR FREIGHT CO. INC.,)	MAGISTRATE JUDGE KEYS
)	
Defendants.)	

COMPLAINT

NOW COMES the plaintiff, TRAVELERS COMPANIES, INC., as Subrogee of Ocean Trading Ltd. (“Travelers”), as by its attorneys, Michael A. Snyder and Timothy S. McGovern, and complains of defendants, EVERGREEN SHIPPING AGENCY (AMERICA) CORPORATION (“Evergreen”) and ACE WORLD WIDE AIR FREIGHT CO. INC. (“Ace”), as follows:

1. This is an action for damage to a cargo of 124 paper reels owned by Ocean Trading Ltd. (the “Cargo”) being transported by road in international and/or interstate commerce by Evergreen and/or Ace. Jurisdiction is proper pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1337, as the case is governed by the Carriage of Goods by Sea Act, 46 U.S.C.App. §§ 1300, *et seq.*, and the Carmack Amendment, 49 U.S.C. §§ 14706, and the matter in controversy exceeds \$10,000.00, exclusive of interest and costs. This Court has supplemental jurisdiction over common law claims pursuant to 28 U.S.C. § 1337.

2. Venue is proper pursuant to 28 U.S.C. § 1391, as Evergreen and Ace both maintain an office within this district.

3. Travelers is a corporation engaged in the business of providing insurance, and insured the Cargo. Pursuant to a policy of insurance, Travelers paid a claim for damage to the Cargo to Ocean Trading Ltd. in return for subrogation rights. A true and accurate copy of the subrogation receipt is attached hereto as Exhibit A and made a part hereof.

4. Ocean Trading Ltd. is a company engaged in the business of exporting paper products in international commerce.

5. Evergreen is a corporation engaged in the business of providing intermodal transportation of goods for hire. Evergreen undertook to transport the Cargo from Green Bay, Wisconsin, to Germany, under "door to door" terms. Further, upon information and belief, Evergreen selected Ace to perform trucking services relative to the intermodal carriage. A true and accurate copy of the booking note is attached hereto as Exhibit B and made a part hereof ("Booking Note").

6. Ace is a corporation engaged in the business of providing trucking and logistics services for hire. Upon information and belief, Ace was hired by Evergreen to perform trucking services between Wisconsin and Illinois with respect to the Cargo. Ace, through its employees and/or agents, hauled the cargo that is the subject matter of this action pursuant to a bill of lading from Green Bay, Wisconsin, to its facility in Cudahy, Wisconsin. Ace further commenced transportation of the Cargo from its facility in Cudahy, Wisconsin, and was en route to Chicago, Illinois, at the time of the loss. A true and accurate copy of the bill of lading is attached hereto as Exhibit C and made a part hereof.

7. On or about August 19, 2007, Evergreen and/or Ace, through their employees and/or agents, received the Cargo in Green Bay, Wisconsin.

8. At the time Evergreen and/or Ace received the Cargo, the Cargo was in good order and condition.

9. On August 17, 2007, Evergreen and/or Ace carried the Cargo to the Ace facility in Cudahy, Wisconsin.

10. On August 20, 2007, Evergreen and/or Ace, through their employees and/or agents, departed Ace's facility in Cudahy, Wisconsin, with the Cargo, intending to deliver it to Chicago.

11. On that same day, Evergreen and/or Ace, through their employees and/or agents, rolled over the truck and trailer while attempting to negotiate the entrance ramp to Interstate 94, causing damage to the Cargo.

12. The Cargo was damaged and otherwise impaired in value to the extent of \$44,396.56, as nearly as can be estimated.

COUNT I

(Carriage of Goods by Sea Act)

13. Plaintiff repeats and realleges the allegations of paragraphs 1 through 12 of its complaint as paragraphs 1 through 12 of this Count I.

14. By reason of the premises, Evergreen and/or Ace breached their respective duties and obligations under the Booking Note and the bill of lading, and breached their respective obligations as a carrier and bailee of the Cargo, in one or more of the following ways:

- (a) Failing to deliver the Cargo in good order and condition;
- (b) Failing to carry the Cargo at an appropriate speed and in such a manner that the truck and Container would not roll-over and damage the Cargo;
- (c) Failing to carry the Cargo safely; and
- (d) Otherwise failed to perform with respect to the Cargo, as required by the agreements between the parties.

15. Travelers brings this action on its own behalf and as agent and trustee, on behalf of and for the interest of all parties who may be or become interested in the said Cargo, as the respective interests may ultimately appear, and Travelers is entitled to maintain this action.

16. Plaintiff and its subrogor have duly performed all duties and obligations on their part to be performed.

17. By reason of the premises, plaintiff has sustained damages, as nearly as can be estimated, no part of which has been paid, in the amount of \$44,396.56, plus interest, costs and expenses.

WHEREFORE, plaintiff, TRAVELERS COMPANIES, INC., as Subrogee of Ocean Trading Ltd., prays that judgment be entered in its favor and against EVERGREEN SHIPPING AGENCY (AMERICA) CORPORATION and ACE WORLD WIDE AIR FREIGHT CO. INC., jointly and severally, in the amount of \$44,396.56, plus interest, costs and expenses, and for such other relief as this Court deems just.

COUNT II

(Carmack Amendment)

18. Plaintiff repeats and realleges the allegations of paragraphs 1 through 12 of its complaint as paragraphs 1 through 12 of this Count II.

19. By reason of the premises, Evergreen and/or Ace have breached their respective duties and obligations under the Booking Note and the bill of lading, and have breached their respective obligations as carrier and bailee of the Cargo, in one or more of the following ways:

- (a) Failing to deliver the Cargo in good order and condition;
- (b) Failing to carry the Cargo at an appropriate speed and in such a manner that the truck and Container would not roll-over and damage the Cargo;
- (c) Failing to carry the Cargo safely; and
- (d) Otherwise failed to perform with respect to the Cargo, as required by the agreements between the parties.

20. Travelers brings this action on its own behalf and as agent and trustee, on behalf of and for the interest of all parties who may be or become interested in the said Cargo, as the respective interests may ultimately appear, and Travelers is entitled to maintain this action.

21. Plaintiff and its subrogor have duly performed all duties and obligations on their part to be performed.

22. By reason of the premises, plaintiff has sustained damages, as nearly as can be estimated, no part of which has been paid, in the amount of \$44,396.56, plus interest, costs and expenses.

WHEREFORE, plaintiff, TRAVELERS COMPANIES, INC., as Subrogee of Ocean Trading Ltd., prays that judgment be entered in its favor and against EVERGREEN SHIPPING AGENCY (AMERICA) CORPORATION and ACE WORLD WIDE AIR FREIGHT CO. INC., jointly and severally, in the amount of \$44,396.56, plus interest, costs and expenses, and for such other relief as this Court deems just.

Respectfully submitted,

TRAVELERS COMPANIES, INC.,
as Subrogee of Ocean Trading Ltd..
plaintiff,

/s/ Timothy S. McGovern

Its attorney

Michael A. Snyder
Timothy S. McGovern
SNYDER McGOVERN, LLC
12750 South Harlem Avenue
Suite 2A
Palos Heights, Illinois 60463
Tel.: (708) 448-9700
Fax: (708) 448-9750



TRAVELERS COMPANIES INC.
OCEAN MARINE RECOVERY
P. O. Box 9093
100 Bayliss Road
Melville, NY 11747-9093

SUBROGATION RECEIPT

POLICY NO/CLAIM NO.

OK09000046, AES8029

ASSURED:

Ocean Trading Ltd.

DATE OF LOSS:

Received of the Travelers Companies, Inc. the sum of **Forty Four Thousand Three Hundred Ninety Six and 56/100 (\$44,396.56)** in full settlement of all claims and demands of the undersigned for loss of or damage or expense in respect of Rolls of Paper, Cert. of Ins#1185595000128 during transit. *In consideration of said payment:*

The undersigned subrogates, assigns and transfers to said Insurance Company all the rights, claims and interest which the undersigned may now or in the future have, in contract or tort, in general average or otherwise, against any person or corporation in respect of the loss, damage or expense suffered by the undersigned or on its behalf.

The undersigned authorizes the said Insurance Company to sue, in the undersigned's name and compromise or settle all such claims and to execute and sign releases and acquittances and endorse checks or drafts given in settlement of such claims in the name of the undersigned with the same force and effect as if the undersigned executed or endorsed them.

The undersigned covenants and agrees to cooperate fully and assist said Insurance Company in the prosecution of any actions or claims, and to procure and furnish all witnesses, papers, documents or things necessary in such proceedings, to attend and testify at any court proceedings, execute documents and perform such other acts as may be requested by said Insurance Company in connection with such actions or claims.

The undersigned warrants that it is the sole owner of any said property and is the one entitled to enforce all claims and causes of action whatsoever arising from loss or damage to said property. The undersigned further warrants that no settlement has been made with any person or corporation against whom a claim may lie, and no release has been given to anyone and that no such settlement will be made nor release given by the undersigned without written consent of said Insurance Company.

The undersigned warrants that said payment shall not inure to the benefit of any carrier under the provisions of any contract of carriage or otherwise; that in making payment the said Insurance Company does not waive any rights of subrogation or otherwise against any carrier or bailee; and that the acceptance of this receipt shall not prejudice or take away any rights or remedies which the said Insurance Company would otherwise have by virtue of such payment.

Authorized Signature

Print Name and Title

Kevin Peters - President

26 December 2007

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Sandra L. Bernacki, Notary Public
Falls Twp., Bucks County
My Commission Expires May 1, 2011

Member, Pennsylvania Association of Notaries

State of PENNSYLVANIA
County of Bucks

On this 26th day of DECEMBER, 2007 before me personally appeared KEVIN PETERS to me known, and known to me to be the same person described in and who executed the within instrument, and he acknowledged to me that he executed the same.

26 Dec 2007
My Commission Expires: MAY 1, 2011

Notary Public

GROSS CLAIM: \$55,896.56
LESS DEDUCTIBLE: \$11,500.00
NET CLAIM: \$44,396.56

Please sign and return to: Travelers Companies Inc.
Ocean Marine Recovery
PO Box 9093
Melville, NY 11747

Andreas Oberholzer

From: cargo_notice@evergreen-shipping.us
Sent: Monday, August 13, 2007 1:43 PM
To: Andreas Oberholzer
Subject: 430703163725 BOOKING CONFIRMATION Ref-no: <<A1_SB8DG2P0.CNT>>

<<A1_SB8DG2P0.CNT>>

TO:HELVETIA CONTAINER LINE
 P.I.C : ANDREAS OBERHOLZER
 P.I.C : ESPERANZA DELLA RO

***** BOOKING CONFIRMATION / REVISE : 100 *****

DATE:2007/08/13 13:17:37

LOCAL BOOKING NO.: 703163721
 VESSEL/VOYAGE : EVER RACER 0286-066E (LINE: NUE)
 CARRIER : EVERGREEN LINE SCAC: EGLV
 ON BEHALF OF : EVERGREEN MARINE CORPORATION
 PLACE OF RECEIPT : GREEN BAY, WI, UNITED STATES OF AMERICA
 IPI CUT OFF DATE : 2007/08/18
 EARLIEST RETURN DATE : 2007/08/15 15:12
 PLACE OF LOADING : NORFOLK, VA, UNITED STATES OF AMERICA
 CARGO CUT OFF DATE/TIME : 2007/08/23 08:00
 DOC CUT OFF DATE/TIME : 2007/08/22 12:00
 ETD DATE : 2007/08/27
 PLACE OF DISCHARGING: BREMERHAVEN, GERMANY
 FINAL DESTINATION : BARGTEHEIDE, GERMANY
 ETA DATE : 2007/09/11 (SUBJECT TO CHANGE WITHOUT PRIOR
 NOTICE)
 CUSTOMER : HELVETIA CONTAINER LINE
 SHIPPER : HELVETIA CONTAINER LINE
 P.I.C. : ANDREAS TEL: -2128975830
 P.I.C. : ESPERANZA TEL: -2128975830
 SERVICE TYPE/MODE : (FCL/FCL)/(DOOR/DOOR)
 PRE-CARRIAGE : CARRIER HAULAGE
 COMMODITY : PAPER PRODUCTS
 B/L ISSUED AT : NEW YORK, NY
 QTY/TYPE : GWT(EACH) MAXIMUM Cargo GWT(EACH) IMO
 CLASS/UN
 NO

====
 1 /40' HI-CUBE 37,000.00 44,000.00 (NON-HAZARDOUS)
 EMPTY PICK UP AT : HAMILTON CONTAINER SERVICES
 ADDRESS : 3400 S. CALIFORNIA AVENUE
 CITY : CHICAGO ZIP: 60608
 TEL NO. : 773-8474912
 FULL RETURN TO : NS LANDERS CHICAGO
 ADDRESS : 2543 WEST COLUMBUS
 CITY : CHICAGO ZIP: 60629
 TEL NO. : 773-9335693
 RAIL BILLING E-MAIL : chirb@evergreen-shipping.us

EXHIBIT B

FAX NO :888-608-0699
 QTY TYPE STOP_SEQ PLACE OF POSITION DATE/TIME
 LOAD_TYPE
 =====

1 4SH 001 2007/08/17 00:00
 STRAUBEL PAPER
 1515 PARTNERSHIP DR
 GREEN BAY, WI,54301
 KIM FOSTER TEL:920-3365022 INLAND REFERENCE NO.:PO# 21072007

RATE INFO :SC 23602
 PARTIAL LOAD :ALLOWED

Message:

Export demurrage is applicable at the Port of Norfolk.

Free Time for Export will begin at 0800hrs after receipt of cargo.

Amount of Free Time allowed: 7 calendar days for Dry cargo, 3 working days for Reefer cargo.

Demurrage will begin after freetime and end upon loading on vessel.
 All costs will be for the account of cargo.

Roll Over / Rehandling charge (change in vessel) will also be for the account of cargo.

The Carrier does not make any guarantee as to the accuracy or correctness of any information contained in the tentative schedule set forth in this notice, and the Carrier may amend, revise this schedule from time to time without any prior notice.

Please review all the information for accuracy and contact Carrier concerning any discrepancies. Any fines, penalties, or additional cost that could arise due to inaccurate information provided to the Carrier will be for the account of the cargo.

This will confirm the details of your new or amended booking of cargo with us. Please advise us promptly with any correction necessary.

Thanks for shipping with us!

"It is the responsibility of the Booking Parties to ensure that the Service Contract Number given at time of booking contains a valid rate for the booking being made. If there is not a valid rate within the Contract, Carrier may apply a either a Tariff Rate, or Cargo NOS, to any such booking made without a valid rate within the Contract."

Please submit Bill of Lading instruction as per above mentioned

Documentation cut off and/or Cargo cut off date. Failure to do so, will result in your container(s) not loading the booked scheduled vessel. Any additional charges, penalties or costs will be to the account of the cargo.

It is imperative that customers provide complete BL(Bill of Lading) instructions with container, seal number, AES ITN(Automated Export System Internal Transaction Number), and all other required information to comply with CFR and carrier's tariff/policy.

As the shipper and/or their booking agent is responsible for the Load, Stow and Count it is also their responsibility to provide the same on their master BL instructions. Failure to comply with such information, may result in delay of BL proofreading and BL releases, or cargo being rolled-over. Any rolled-over cargo will incur an extra charge that must be paid by the shipper/customer.

Evergreen America Corp. will change its name to Evergreen Shipping Agency (America) Corporation (www.evergreen-shipping.us). The new name and website address will become effective on March 1, 2007. The renaming is part of a global realignment and revamping of all Evergreen's liner shipping services to take place this year. Cargo-carrying services to and from all existing locations will remain the same.

All office address, phone numbers and staff will also remain unchanged. Effective March 1, 2007 the new website address is www.evergreen-shipping.us Shipment information will remain available at www.shipmentlink.com E-mail address will be the person's first and last name as one word @evergreen-shipping.us

If you have any questions, please feel free to contact your local sales office for assistance.

BOOKING SECTION
MINGLI YEN (YEN, MINGLI)
TEL:1-201-7613489 FAX:1-201-7613013
EMAIL:tfcexp@evergreen-shipping.us

STRAIGHT BILL OF LADING — SHORT FORM — Original — Not Negotiable

SEARCH NO. 3247

CARRIER NO. _____

7-387-1611-04

Wd2E:2 1002 11-2008

EXHIBIT C